

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**NANCY S WALTERS**

Claimant

**APPEAL NO. 06A-UI-11560-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NIEMANN FOODS INC**

Employer

**OC: 10/22/06 R: 04  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated November 20, 2006, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on December 18, 2006. The claimant participated. The employer participated by Ryan Curtis, Store Director.

**ISSUES:**

The issues in this matter are whether the claimant was discharged under disqualifying conditions, whether the claimant was overpaid unemployment insurance benefits and whether the employer's appeal was timely.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant last worked for this employer from December 11, 2003 until she was discharged on January 24, 2006. Ms. Walters held the position of full-time deli clerk and was paid by the hour. The claimant was discharged from employment when she was unable to return to her employment at the expiration of the family medical leave that had been requested on November 2, 2005 and approved by the employer. The expected return date on the medical leave stated "unknown at this point." Subsequently the employer determined that available time of medical leave for the claimant would expire on January 24, 2006 and sent a letter to the claimant informing her of this fact. Ms. Walters did not receive the letter until after she had been discharged by the employer. Ms. Walters was unaware that she was expected to return to work on January 24, 2006 as she continued to be seriously ill at that time and had not been released by her physician. Subsequently the claimant received a letter from the employer informing her that she had been terminated. Ms. Walters was not released by her physician as being able to return to work until October 15, 2006. The claimant did not claim unemployment insurance benefits until after that date. Upon being released the claimant attempted to return to employment with Niemann Foods, Inc. The delay in the employer's appeal appears to have been caused by routing problems beyond the employer's control.

## REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

In this case the administrative law judge finds that the evidence establishes that Ms. Walters did not return to available work on January 24, 2006 because she was unable to do so due to medical reasons and because she was not aware that she was expected to return on that date and, therefore, did not provide additional notification to the employer. At the time Ms. Walters began her FMLA leave of absence the return date was unknown and not specified. Throughout the time that the claimant was away from work she was under the care of her doctor and unable to return to work due to a serious medical condition. The evidence establishes the claimant did not receive a letter sent by the employer indicating that her leave would expire on January 24, 2006 until after the expiration date and the claimant had been discharged. The administrative law judge, therefore, finds that the claimant had not intentionally failed to provide notification to the employer of her ongoing need to be absent and that the claimant's absence from work was due to medical necessity and beyond the claimant's control. Although the claimant was unavailable for work for an extended period of time, she was not overpaid unemployment insurance benefits as Ms. Walters did not claim unemployment insurance benefits until after being fully released by her physician. At the time of hearing the claimant continues to attempt to be re-employed by Niemann Foods, Inc.

**DECISION:**

The representative's November 20, 2006, reference 01, decision is affirmed. The claimant is eligible to receive unemployment insurance benefits as long as she meets all other eligibility requirements of the law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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